

1 ROBERT J. YORIO (SBN 93178)  
yorio@carrferrell.com  
2 ILENE H. GOLDBERG (SBN 168051)  
igoldberg@carrferrell.com  
3 CHRISTINE S. WATSON (SBN 218006)  
cwatson@carrferrell.com  
4 CHRISTOPHER P. GREWE (SBN 245938)  
cgrewe@carrferrell.com  
5 CARR & FERRELL LLP  
2200 Geng Road  
6 Palo Alto, California 94303  
Telephone: (650) 812-3400  
7 Facsimile: (650) 812-3444

8 Attorneys for Plaintiffs/Counterdefendants  
INGRID & ISABEL, INC. and  
9 INGRID & ISABEL, LLC

10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12 SAN FRANCISCO DIVISION  
13

14 INGRID & ISABEL, INC., a California  
corporation, and INGRID & ISABEL, LLC,  
15 a California limited liability company,

16 Plaintiffs,

17 v.

18 BABY BE MINE, LLC,  
a Delaware limited liability company,

19 Defendants.  
20

CASE NO. C08-02554 JCS

**ANSWER AND AFFIRMATIVE  
DEFENSES OF PLAINTIFFS/  
COUNTERDEFENDANTS TO  
COUNTERCLAIMS OF  
DEFENDANT/  
COUNTERCLAIMANT**

**JURY TRIAL DEMANDED**

21 AND RELATED COUNTERCLAIMS.  
22

23 Plaintiffs and Counterdefendants INGRID & ISABEL, INC. and INGRID & ISABEL, LLC  
24 (collectively, "Plaintiffs"), by and through their attorneys of record, hereby reply to the  
25 Counterclaim of Defendant and Counterclaimant BABY BE MINE, LLC ("Defendant") filed in the  
26 above-captioned action.

27 **ALLEGATIONS REGARDING JURISDICTION**

28 1. On information and belief, Plaintiffs admit the allegations of Paragraph 1.

(Declaratory Judgment)

14. Plaintiffs repeat and incorporate by reference their responses to Paragraphs 1 through 13 inclusive of the Counterclaim, as if set forth in full herein.

15. Plaintiffs admit that certain claims in the Patent in Suit contain the quoted language, “whereby the band holds the upper end of the pants or skirt closely against the torso retaining the pants or skirt in place,” “to hold the skirt or pants in place on the women’s body,” “to hold the skirt or pants in place on the women’s body,” “whereby the band holds the upper end of the pants or skirt closely against the torso, retaining the parts of skirt in place,” “to hold the skirt or pants on the

1 woman's body," and "to hold the skirt or pants in place on the women's body." Plaintiffs deny any  
2 and all remaining allegations of Paragraph 15.

3 16. Plaintiffs are without sufficient information or knowledge to admit or deny the  
4 allegations of Paragraph 16 and therefore deny the allegations of this Paragraph.

5 17. Plaintiffs deny the allegations in the second sentence of Paragraph 17 and are  
6 without sufficient information or knowledge to admit or deny the allegations in the first and third  
7 sentences of Paragraph 17 and therefore deny the allegations of in those sentences.

8 18. Plaintiffs deny the allegations of Paragraph 18.

9 19. Plaintiffs deny the allegations of Paragraph 19.

10 20. Plaintiffs deny the allegations of Paragraph 20.

11 21. Plaintiffs deny the allegations of Paragraph 21.

## 12 **COUNT II**

13 (Breach of Contract)

14 22. Plaintiffs repeat and incorporate by reference their responses to Paragraphs 1  
15 through 21 inclusive of the Counterclaim, as if set forth in full herein.

16 23. Plaintiffs admit the allegations of Paragraph 23.

17 24. Plaintiffs admit that the "First Complaint is in two Counts" and that "Count One  
18 alleges violation of common law rights including unfair competition." Plaintiffs deny any and all  
19 remaining allegations of Paragraph 24.

20 25. Plaintiffs admit that the First Complaint alleged a cause of action for trademark  
21 infringement. Plaintiffs deny any and all remaining allegations of Paragraph 25.

22 26. Plaintiffs admit the allegations of Paragraph 26 to the extent that "First Suit"  
23 actually refers to "First Case" as defined by Defendant in Paragraph 23 of Defendant's Answer to  
24 Complaint and Counterclaims.

25 27. Plaintiffs admit that Paragraph 3 of the Settlement Agreement permits Defendant to  
26 use the terms and phrases, "Maternity Belly Band," "Maternity Band," "Baby Be Mine Maternity  
27 Belly Band," and "Baby Be Mine Belly Band." Plaintiffs are without sufficient information or  
28

1 knowledge to admit or deny the allegations in the second sentence of Paragraph 27 and therefore  
2 deny those allegations.

3 28. Plaintiffs admit the allegations of Paragraph 28, except for the misquotations,  
4 “claims of defense” and “time up and including.” Plaintiff admits that the release in Paragraph 7 of  
5 the Settlement Agreement only applies to claims or defenses existing up to the date of the  
6 Settlement Agreement and that the Complaint in the instant action concerns actions and conduct  
7 that have occurred, or are occurring, after the date of the Settlement Agreement.

8 29. Plaintiffs are without sufficient information or knowledge to admit or deny the  
9 allegations of Paragraph 29 and therefore deny the allegations of this Paragraph.

10 30. Plaintiffs admit that the Patent in Suit issued after the date of the Settlement  
11 Agreement and that their patent application was filed in 2003. Plaintiffs deny any and all  
12 remaining allegations of Paragraph 30.

13 31. Plaintiffs admit that their maternity band products embody the inventions disclosed  
14 in the subject patent. Plaintiffs deny any and all remaining allegations of Paragraph 31.

15 32. Plaintiffs admit that a Request for Dismissal and Order was signed by Judge Wayne  
16 D. Brazil on May 17, 2007 in the First Case.

17 33. Plaintiffs deny the allegations of Paragraph 33.

18 34. Plaintiffs admit the allegations of Paragraph 34.

19 35. Plaintiffs deny the allegations of Paragraph 35.

20 36. Plaintiffs deny the allegations of Paragraph 36.

21 37. Plaintiffs deny the allegations of Paragraph 37.

22 38. Plaintiffs deny the allegations of Paragraph 38.

23 **ANSWER TO COUNTERCLAIMANT’S PRAYER FOR RELIEF**

24 39. Plaintiffs deny that Defendant is entitled to any relief whatsoever from Plaintiffs or  
25 this Court, either as requested in the Counterclaims or as might otherwise be available in equity or  
26 at law.

27 **GENERAL DENIAL**

28 40. Plaintiffs further deny each and every allegation contained in the Counterclaims to

1 which Plaintiffs have not specifically responded.

2 **AFFIRMATIVE DEFENSES**

3 Plaintiffs assert the following affirmative defenses and reserve the right to allege additional  
4 defenses as they are discovered.

5 **FIRST AFFIRMATIVE DEFENSE**

6 (Failure to State a Claim)

7 1. As a separate and first affirmative defense to the Counterclaims and to each claim  
8 for relief against Plaintiffs set forth therein, Plaintiffs allege that the Counterclaims fail to state  
9 facts sufficient to support any claim upon which relief can be granted against Plaintiffs.

10 **SECOND AFFIRMATIVE DEFENSE**

11 (Unclean Hands)

12 2. As a separate and second affirmative defense to the Counterclaims and to each claim  
13 for relief against Plaintiffs set forth therein, Plaintiffs allege upon information and belief that  
14 Defendant's claims are barred in whole or in part by the doctrine of unclean hands.

15 **THIRD AFFIRMATIVE DEFENSE**

16 (Waiver)

17 3. As a separate and third affirmative defense to the Counterclaims and to each claim  
18 for relief against Plaintiffs set forth therein, Plaintiffs allege upon information and belief that  
19 Defendant is barred in whole or in part due to the doctrine of waiver.

20 **FOURTH AFFIRMATIVE DEFENSE**

21 (Estoppel)

22 4. As a separate and fourth affirmative defense to the Counterclaims and to each claim  
23 for relief against Plaintiffs set forth therein, Plaintiffs allege upon information and belief that  
24 Defendant is barred in whole or in part due to the doctrine of estoppel.

25 **FIFTH AFFIRMATIVE DEFENSE**

26 (Patent Infringement)

27 5. As a separate and fifth affirmative defense to the Counterclaims and to each claim  
28 for relief against Plaintiffs set forth therein, Defendant and Counterclaimant has been, and is now,

1 infringing, directly and indirectly by way of inducement and/or contributory infringement, the  
2 claims of the '775 Patent.

3 6. Plaintiffs reserve the right to supplement the Answer to Defendant's Answer and  
4 Counterclaims, including, but not limited to, adding additional affirmative defenses.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiffs and Counter-Defendants hereby pray as follows:

- 7 1. That Defendant and Counter-Claimant take nothing and be afforded no equitable  
8 relief or otherwise by reason of the Counterclaims.  
9 2. For attorneys fees and costs of suit herein incurred.  
10 3. For such other relief as the Court may deem just.

11  
12 Dated: August 13, 2008

CARR & FERRELL *LLP*

13  
14 By: 

15 ROBERT J. YORIO  
16 ILENE H. GOLDBERG  
17 CHRISTINE S. WATSON  
18 CHRISTOPHER P. GREWE

19 Attorneys for Plaintiffs/Counterdefendants  
20 INGRID & ISABEL, INC. and  
21 INGRID & ISABEL, LLC  
22  
23  
24  
25  
26  
27  
28

**DEMAND FOR JURY TRIAL**

Plaintiffs and Counter-Defendants INGRID & ISABEL, INC. and INGRID & ISABEL, LLC hereby demand a jury trial of all issues in the above-captioned action that are triable to a jury.

Dated: August 13, 2008

CARR & FERRELL *LLP*

By: 

ROBERT J. YORIO  
ILENE H. GOLDBERG  
CHRISTINE S. WATSON  
CHRISTOPHER P. GREWE

Attorneys for Plaintiffs/Counterdefendants  
INGRID & ISABEL, INC. and  
INGRID & ISABEL, LLC